STATE OF MICHIGAN

COURT OF APPEALS

PAUL D. ANDERSON and KIM ANDERSON,

Plaintiffs-Appellants,

v

FORD MOTOR COMPANY,

Defendant-Third-Party-Appellee,

and

J.A. JONES ENVIRONMENTAL SERVICES COMPANY,

Third Party-Appellee.

UNPUBLISHED
October 26, 2004

No. 246502
Monroe Circuit Court
LC No. 01-012354-NO

PAUL D. ANDERSON and KIM ANDERSON,

Plaintiffs,

v

FORD MOTOR COMPANY,

Defendant-Third-Party-Appellee,

and

J.A. JONES ENVIRONMENTAL SERVICES COMPANY.

Third Party-Appellant.

No. 246690
Monroe Circuit Court
LC No. 01-012354-NO

Before: Donofrio, P.J., and White and Talbot, JJ.

PER CURIAM.

In Docket No. 246502, plaintiff Kim Anderson,[1] and her husband plaintiff Paul Anderson, now deceased, appeal as of right the trial court orders granting summary disposition to defendant Ford Motor Company, pursuant to MCR 2.116(C)(7) and (C)(10). Plaintiff Mr. Anderson (hereafter 'plaintiff') worked as a heavy equipment operator for general contractor/third party defendant J.A. Jones Environmental Services Company, and alleged that he suffered lung damage while conducting sludge removal from the Monroe Stamping Plant site, formerly owned by defendant Ford. Defendant Ford responded with a third-party complaint alleging that Jones was contractually responsible for the safety conditions on the work site and seeking indemnification or contribution from third party defendant Jones, pursuant to a provision in the parties' contract. The trial court granted summary disposition to defendant Ford as to third party defendant Jones' duty to indemnify, and subsequently denied Jones' motion for reconsideration. In Docket No. 246690, third party defendant Jones appeals as of right. The cases have been consolidated on appeal. We affirm.

This Court reviews the trial court's grant or denial of summary disposition de novo. *Spiek v Dep't of Transportation*, 456 Mich 331, 337; 572 NW2d 201 (1998). In determining whether a party is entitled to judgment as a matter of law pursuant to MCR 2.116(C)(7), a court must accept as true a plaintiff's well-pleaded factual allegations, affidavits, or other documentary evidence and construe them in the plaintiff's favor" *Terrace Dev v Seeligson & Jordan*, 250 Mich App 452, 455; 647 NW2d 524 (2002). Summary disposition should also be granted if the evidence demonstrates that no genuine issue of material fact exists, and that the moving party is entitled to judgment as a matter of law. *MacDonald v PKT, Inc*, 464 Mich 322, 332; 628 NW2d 33 (2001).

In Docket No. 246502, plaintiff argues that the trial court erred in finding, pursuant to MCR 2.116(C)(7), that plaintiff's claim was barred by the applicable 3-year statute of limitations. We do not agree. A personal injury action "accrues when the plaintiff discovers, or through the exercise of reasonable diligence could have discovered," "(1) an injury, and (2) the causal connection between plaintiff's injury and the defendant's breach." *Moll v Abbott Laboratories*, 444 Mich 1, 16; 506 NW2d 816 (1993). "A simple negligence cause of action accrues when a prospective plaintiff first knows or reasonably should know he is injured." *Stephens v Dixon*, 449 Mich 531, 538; 536 NW2d 755 (1995). Whether a plaintiff "should have known" is determined under an objective standard, "based on an examination of the surrounding circumstances." *Id.* "Once a plaintiff is aware of an injury and its possible cause, the plaintiff is aware of a possible cause of action." *Id.* "Hence, '[t]he discovery rule applies to the discovery of an injury, not to the discovery of a later realized consequence of the injury.'" *Stephens, supra*, 449 Mich 538, quoting *Moll, supra*, 444 Mich 18. An objective view of the record established that skin was peeling from plaintiff's hands and he was having breathing problems and was concerned about the safety of the work site more than three years before filing this action.[2] Summary disposition was properly granted.[3]

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[1] Mrs. Anderson's claims were derivative to her husband's.

[2] Plaintiff testified that after his skin began peeling and he began to have difficulty breathing, he
(continued…)

In Docket No. 246690, third party appellant Jones argues that the trial court erred in granting summary disposition to defendant Ford and in ruling that Jones had a duty to indemnify defendant Ford. There is no merit to this claim. "This Court reviews de novo a trial court's grant or denial of summary disposition. The interpretation of a contract is also a question of law this Court reviews de novo on appeal, including whether the language of a contract is ambiguous and requires resolution by the trier of fact." *DaimlerChrysler v G-Tech*, 260 Mich App 183, 184-185; 678 NW2d 647 (2003), citations omitted. Indemnity agreements are "construed in the same manner as other contracts." *Id.* An indemnification agreement is "construed strictly against the party who drafts the contract and the party who was the indemnitee." *Triple E v Mastronardi*, 209 Mich App 165, 172; 530 NW2d 772 (1995).

The trial court concluded that Jones had a duty to indemnify because of the contractual provision that "Seller [Jones] shall handle and be responsible for every claim that arises from Seller's work on Buyer's [Ford] premises and that is for actual or alleged . . . injury to any person." The parties agreed that Jones would "indemnify and save harmless" Ford, from injuries resulting from "any negligent or willful act or omission" by Ford, but also agreed that Jones was not required to indemnify for claims arising from Ford's negligence. "Where an indemnity agreement is unclear or ambiguous, the intent of the parties is to be determined by the trier of fact." *Sherman v DeMaria Bldg Co*, 203 Mich App 593, 596; 513 NW2d 187 (1994). It is clear that the agreement was intended to provide indemnity, but could not have been intended to provide indemnification for injuries cause by Ford's sole negligence, because such provisions are prohibited by MCL 691.991. Thus, the parties must have intended to provide indemnity in all cases involving Ford's negligence except where Ford's negligence was the sole cause of the injury or damage. *Fischbach-Natkin v PPP, Inc*, 157 Mich App 448, 453; 403 NW2d 569 (1987). The allegations in the underlying complaint here, that Ford negligently supervised, planned and monitored Jones' employees and the work site, implicitly claim negligence by both Ford and Jones. Accordingly, the trial court did not err in finding that Jones had a duty to indemnify Ford.

Affirmed.

/s/ Pat M. Donofrio
/s/ Helene N. White
/s/ Michael J. Talbot

(…continued)

became concerned about his safety and took a series of photographs of the work site. Plaintiff said he began to create the photographic record in October 1997, more than three years before he filed this action on December 8, 2000.

[3] In light of our decision that plaintiff's case was barred by the statute of limitations, we need not address plaintiff's arguments regarding the doctrines of inherently dangerous work and retained control. We are cognizant, however, of *Deshambo v Nielsen*, 471 Mich 27; 684 NW2d 332 (2004); *Ormsby v Capital Welding*, 471 Mich 45 ; 684 NW2d 320 (2004).